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7

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 JOEY CARDIEL,

15 Defendant.
16

Case No. 1:22-CR-00041-NODJ-BAM

STIPULATION TO CONTINUE
MOTIONS HEARING;
ORDER

Date: August 19, 2024
Time: 9:00 a.m.
Judge: Jennifer L. Thurston
17

18 **IT IS HEREBY STIPULATED** by and between the parties, through their respective
19 counsel, Antonio J. Pataca, Assistant United States Attorney, counsel for plaintiff, and Eric V.
20 Kersten, Assistant Federal Defender, counsel for defendant Joey Cardiel, that the motions
21 hearing scheduled for July 1, 2024 may be continued to August 19, 2024.

22 Mr. Cardiel is charged with being felon in possession of a firearm in violation of 18
23 U.S.C. § 922(g)(1). He has filed a motion to dismiss the indictment under *Bruen*, and motions to
24 suppress statements and evidence under *Miranda* and the Fourth Amendment. The government
25 has filed oppositions to all three motions and time has been excluded through the motions
26 hearing and any ruling thereon.

27 On May 9, 2024, a panel of the Ninth Circuit issued its decision in *United States v.*
28 *Duarte*, -- F.4th --, 2024 WL 2068016 (9th Cir. 2024). *Id.* at *24. Five days later, the government

1 filed a petition for rehearing en banc and requested that the Ninth Circuit consider and grant its
 2 petition on an expedited basis, and vacate the *Duarte* panel decision so that it is no longer
 3 precedential. *See Duarte*, C.A. No. 22- 50048, Dkt. 72 (9th Cir. May 14, 2024). On May 16,
 4 2024, the Ninth Circuit issued an order requesting that the defendant-appellant file a response to
 5 the government's rehearing petition. Given the strong grounds for seeking rehearing in *Duarte*
 6 the parties agree that a continuance of the hearing on the motion to dismiss is therefore
 7 warranted. Mr. Cardiel also wishes to continue all motion hearings rather the splitting them in
 8 the interest of judicial economy and the government does not object. Accordingly, the parties
 9 request to continue the July 1, 2024, hearing until August 19, 2024.

10 The parties also agree that the interests of justice served by granting this continuance
 11 outweigh the best interests of the public and the defendant in a speedy trial, and agree the delay
 12 resulting from this continuance shall be excluded under the Speedy Trial Act in the interests of
 13 justice, including but not limited to, the need for the period of time set forth herein for effective
 14 defense preparation, defense investigation and plea negotiations; and for the filing and ruling on
 15 any motion pursuant to 18 U.S.C. §§ 3161(h)(1)(D), 3161(h)(7)(A) and 3161(h)(7)(B)(iv).

16
 17 Respectfully submitted,

18 PHILLIP A. TALBERT
 19 United States Attorney

20 DATED: June 24, 2024

/s/ Antonio J. Pataca
 21 ANTONIO J. PATACA
 22 CODY CHAPPLE
 23 Assistant United States Attorney
 24 Attorney for Plaintiff

25 HEATHER E. WILLIAMS
 26 Federal Defender

27 DATED: June 24, 2024

/s/ Eric V. Kersten
 28 ERIC V. KERSTEN
 Assistant Federal Defender
 Attorney for Defendant
 JOEY CARDIEL

ORDER

IT IS SO ORDERED. The July 1, 2024 motions hearing is continued to August 19, 2024. All time through the motions hearing and any ruling thereon shall be excluded for effective defense preparation and for the filing and ruling on any motion pursuant to 18 U.S.C. §§ 3161(h)(1)(D), 3161(h)(7)(A) and 3161(h)(7)(B)(iv). The Court finds that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

Dated: **June 26, 2024**


UNITED STATES DISTRICT JUDGE